IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES E. BEASLEY, ESQ., et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
HARTMAN, NUGENT, & ZAMOST, et al.	:	NO. 01-0973

MEMORANDUM AND ORDER

HUTTON, J. November 4, 2002

The plaintiffs, James E. Beasley, Esq., Dr. Marsha F. Santangelo, M.D., Esq., and the law firm of Beasley, Casey, and Erbstein (the "Beasley Firm"), are suing the defendants, Phyllis Kushner, the estate of Stanley Kushner, and the law firm of Hartman, Nugent, and Zamost ("the Hartman Firm"), for Wrongful Use of Civil Proceedings under a Pennsylvania statute, 42 Pa. Cons. Stat. Ann §§ 8351-8354 (West 1998). This suit arises out of an unsuccessful legal malpractice suit pursued in Pennsylvania state court by the Hartman Firm on behalf of its clients, Phyllis and Stanley[1] Kushner, against Mr. Beasley, Dr. Santangelo, and the Beasley Firm.[2]

Presently, two motions are before this Court. First, Defendants Phyllis Kushner and the Estate of Stanley Kushner move for summary judgment (Docket No. 30). Second, Plaintiffs move for

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[1] Stanley Kushner died of cancer in the mid-1990s. His widow, Phyllis Kushner, is being sued both in personal capacity and in her role as executrix of his estate.

[2] Pursuant to 28 U.S.C. § 1441, Defendants removed this case from Pennsylvania state court to this Court on February 27, 2001.

partial summary judgment on all issues except damages (Docket No. 31). Because genuine issues of material fact exist regarding probable cause, gross negligence, and improper purpose, both motions are denied.

I. BACKGROUND

Two suits underlie this Wrongful Use of Civil Proceedings action. First, the Kushners brought a medical malpractice action in Pennsylvania state court against Mr. Kushner's physicians. This action was dismissed as barred by the statute of limitations. Second, after their medical malpractice claim was dismissed, the Kushners brought a legal malpractice action against the plaintiffs in this case. The Kushners claimed that the statute of limitations on their medical malpractice action expired while the Beasley Firm was representing them. In May 1999, this suit also was dismissed in Pennsylvania state court. Because the facts of the medical and legal malpractice actions make up the basis for the instant suit, these two actions are discussed in turn below.

A. The Medical Malpractice Action

In the fall of 1993, Phyllis and Stanley Kushner approached the Beasley Firm seeking representation in a potential medical malpractice suit. Def.'s Opp'n Mem. at 2. The Kushners wished to sue Mr. Kushner's physicians for failing to diagnose or disclose the harmful side effects of Mr. Kushner's cardiac medication, Amiodarone. Mr. Kushner began taking Amiodarone in 1985. Sometime

after he began taking this medication, Mr. Kushner started having difficulty walking and breathing. Defs.' App. at Ex. A. He also began to develop black spots on his hands and arms. The neurological and respiratory difficulties were diagnosed as Parkinson's disease. It was later determined, however, that Mr. Kushner's symptoms were the result of Amiodarone toxicity.

At the Beasley Firm's request, Mrs. Kushner prepared a detailed narrative describing Mr. Kushner's medical problems and the actions of his physicians. Id. The Beasley Firm then used this narrative to determine whether to take on the Kushner's case. On December 30, 1993, the Kushners formally retained the Beasley Firm to represent them in their medical malpractice action.

In March 1994, the Kushners met with Dr. Santangelo, an associate at the Beasley Firm, regarding their case. Defs.' Summ. J. Mem. at 3. At this meeting, the Kushners gave medical records to Dr. Santangelo and discussed their case with her. In early August 1994, Dr. Santangelo wrote a memo to James Beasley, Sr., a partner in the Beasley Firm, suggesting that the firm cease representing the Kushners. Pls.' App. at Ex. F.

On August 10, 1994, Dr. Santangelo wrote a letter to the Kushners on behalf of the Beasley Firm. Pls.' App. at Ex. G. In that letter, Dr. Santangelo informed the Kushners that the Beasley Firm would no longer represent them in their medical malpractice suit. The letter stated that the suit could not be brought without

suing all of Mr. Kushner's numerous physicians. The Beasley Firm felt that this would seriously undermine their chances of success. Dr. Santangelo informed the Kushners that Pennsylvania has a two-year statute of limitations for medical malpractice actions.[3] In this letter, Dr. Santangelo also advised the Kushners that "based upon [Mrs. Kushner's] recollection that [the Kushners] first learned of the possibility of Amiodarone toxicity in February of 1993, [Pennsylvania's] two year statute of limitations will expire in January of 1995." Id. Apparently, Dr. Santangelo based these dates on Mrs. Kushner's narrative, which states that she was "stunned" to learn of the connection between Mr. Kushner's Parkinson-like symptoms and Amiodarone in February or March of 1993. Id.

After the Beasley Firm terminated its representation of the Kushners, Mrs. Kushner, now acting in her own capacity and as executrix of her husband's estate, tried to find an attorney to bring her suit. First, in April 1995, Mrs. Kushner contacted Theodore Shaer, Esq. Shaer filed a summons in the Philadelphia

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[3] Pennsylvania applies a two-year statute of limitations to medical malpractice claims. 42 Pa. Cons. Stat. Ann § 5524(2) (West 1981). As a general rule, lack of knowledge, mistake, or misunderstanding does not toll the statute of limitations under section 5524. Murphy v. Saavedra, 746 A.2d 92, 94 (Pa. 2000). The "discovery rule" is an exception to this general tolling rule. The discovery rule provides that "where the existence of the injury is not known to the complaining party and such knowledge cannot reasonably be ascertained within the prescribed statutory period, the limitations period does not begin to run until the discovery of the injury is reasonably possible." Id. (citing Hayward v. Med. Ctr. of Beaver County, 608 A.2d 1040, 1040 (Pa. 1992)). As noted below, there is much dispute in this case regarding when the statute of limitations expired on Mr. Kushner's medical malpractice claim.

Court of Common Pleas against Mr. Kushner's doctors in June 1995. Shaer ultimately withdrew as counsel because of a conflict with one of Mr. Kushner's physicians. Defs.' Summ. J. Mem. at 3-4. Next, Mrs. Kushner retained Agostino Cammisa, Esq. Cammisa, however, was quickly fired by Mrs. Kushner for failing to return her calls. Id. Shortly thereafter, Mrs. Kushner retained B. Alan Dash and his son, David Dash. Id. On June 4, 1996, the Dash Firm filed a complaint on Mrs. Kushner's behalf.

In May 1997, the defendants in the medical malpractice action filed a motion for summary judgment, raising the statute of limitations as a defense. Because Mr. Kushner had taken Amiodarone for so many years, the statute of limitations was a key issue in his case. The medical malpractice defendants raised three potential dates when the statute of limitations began to run: September 22, 1992, April 19, 1993, or May 3, 1993. The September 1992 and May 1993 dates were based on notes in the records of Dr. Sanat Mandal, Mr. Kushner's cardiologist. The April 1993 date was based on the records of Dr. Matthew Stern, the physician treating Mr. Kushner for Parkinson's Disease.

Mrs. Kushner, on the advice of B. Alan Dash, failed to oppose the summary judgment motion. Id. at 5. In a May 1997 letter to Mrs. Kushner, Mr. Dash stated that, while he could "argue around" the September 1992 and April 1993 dates, the May 1993 dates posed a problem that he "could not overcome." Pls.' App. at Ex. I.

Ultimately, the Philadelphia Court of Common Pleas dismissed the action, but did not write an opinion indicating the date on which the statute of limitations expired. Defs.' Summ. J. Mem. at 4-5.

B. The Legal Malpractice Action

In his May 1997 letter, Dash also recommended that Mrs. Kushner file a legal malpractice action against the Beasley Firm. Pls.' App. At Ex. I. Prior to filing this action, Dash wrote a letter to James Beasley informing him of the basis for the suit. Defs.' App. at Ex. H. In this July 1997 letter, Dash stated that a review of Mr. Kushner's medical records led him to believe that the statute of limitations actually began running on a fourth date, February 1992, not previously mentioned in the case. Dash purportedly based this date on the notes of Dr. Matthew Stern. Id.

In late 1997, Dash filed a Writ of Summons on behalf of Mrs. Kushner in the Philadelphia Court of Common Pleas naming James Beasley, Marsha Santangelo, and the Beasley Firm as defendants. Defs.' Summ. J. Mem. at 6. Mr. Beasley responded to this summons with a letter stating that he would seek damages under the Wrongful Use of Civil Proceedings Statute if Mrs. Kushner's suit failed. Id. at Ex. I. Subsequent to the Beasley letter, Dash removed himself as counsel. Shortly thereafter, Mrs. Kushner hired Francis Hartman, Esq., to represent her. Hartman referred the matter to his associate, Richard Cordry, for review. Then, Cordry drafted a

memo to Hartman ("Cordry Memorandum") outlining the basis for any potential legal malpractice action.

In June 1998, Hartman filed a complaint in the legal malpractice action. The claim alleged that the Beasley Firm was negligent for two reasons: (1) failing to investigate the medical malpractice claim in a timely manner and (2) failing to notify the Kushners that the action had to be filed by September 1994. Defs.' Summ. J. Mem. at 7-8.

The legal malpractice action was dismissed on preliminary objections on May 24, 1999. Defendants state that the action was dismissed as a result of an "incorrect averment" in the complaint. It appears that Hartman's complaint averred that the statute of limitations had run on September 1992, instead of September 1994. Id. at 8. This caused the state court to conclude that the statute of limitations ran before the Beasley Firm even began representing the Kushners. Since this dismissal, Mrs. Kushner has not pursued her legal malpractice claim.

After the legal malpractice claim against them was dismissed, Beasley, Santangelo, and the Beasley Firm filed this action for Wrongful Use of Civil Proceedings in Pennsylvania state court. Pursuant to 28 U.S.C. § 1441, the defendants removed the case to this Court in February 2001.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file showing a genuine issue of material fact for trial. Id. at 324. The substantive law determines which facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). If the evidence is such that a reasonable jury could return a verdict for the nonmoving party, then there is a genuine issue of fact. Id.

When deciding a motion for summary judgment, all reasonable inferences are drawn in the light most favorable to the non-moving party. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912, 113 S.Ct. 1262, 122 L.Ed.2d 659 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for

summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than just rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

III. DISCUSSION

A. The Legal Framework

The tort of malicious prosecution has been codified in Pennsylvania at 42 Pa. Cons. Stat. Ann §§ 8351-8354 (West 1998), also known as the "Dragonetti Act." To establish a claim under the statute, a plaintiff must show: (1) that the defendant took part in the procurement, initiation, or continuation of the underlying action against the plaintiff; (2) that this underlying action terminated in favor of the party against whom it was brought; (3) that the defendant either acted in a grossly negligent manner or without probable cause in bringing the underlying suit; and (4) that the defendant brought the underlying suit for an improper purpose. 42 Pa. Cons. Stat. Ann. § 8351 (West 1998). As the statutory requirements show, a party bringing an action under the Dragonetti Act "bears a heavy burden." U.S. Express Lines, Ltd. v. Higgins, 281 F.3d 383, 394 (3d Cir. 2002).

In this case, there is no dispute that the defendants brought a legal malpractice action against the plaintiffs in Pennsylvania state court. Likewise, there is no dispute that the proceedings

terminated in favor of the plaintiffs in this case, Beasley, Santangelo, and the Beasley Firm. Accordingly, the only issues to be determined are: (1) whether the defendants, Mrs. Kushner and the Hartman Firm, acted without probable cause or with gross negligence in bringing the legal malpractice suit and (2) whether they brought such suit for an improper purpose.

1. Probable Cause

Under the Dragonetti Act, the burden is on the plaintiff to prove that the defendant lacked probable cause to bring the underlying action. 42 Pa. Cons. Stat. Ann. § 8354(3) (West 1998). For purposes of the Act, "probable cause" is defined as follows:

> A person who takes part in the procurement, initiation, or continuation of civil proceedings against another has probable cause for doing so if he reasonably believes in the existence of the facts upon which the claim is based, and either:
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> (1) Reasonably believes that under those facts the claim may be valid under the existing or developing law;
>
> (2) Believes to this effect in reliance upon the advice of counsel, sought in good faith and given after full disclosure of all relevant facts within his knowledge and information; or
>
> (3) Believes as an attorney of record in good faith that his procurement, initiation or continuation of a civil cause is not intended to merely harass or maliciously injure the opposite party.

42 Pa. Cons. Stat. Ann. § 8352 (West 1998). If there are no material facts in controversy, then probable cause is an issue for the court to decide. Bannar v. Miller, 701 A.2d 242, 248 (Pa. Super. Ct. 1997). Accordingly, the issue of probable cause may be submitted to the jury when material facts are in controversy. Id.

2. Gross Negligence

Even if a lack of probable cause cannot be shown, a party may bring a successful action under the Dragonetti Act by showing that the defendant was grossly negligent in bringing the underlying suit. 42 Pa. Cons. Stat. Ann. § 8351(a)(1) (West 1998). The plaintiff need not demonstrate actual malice by the party that brought the underlying action. Catania v. Hanover Insurance Co., 566 A.2d 885, 888 (Pa. Super. Ct. 1989). Instead, gross negligence is defined as "a lack of slight diligence or care, or a conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party. . . ." Hart v. O'Malley, 781 A.2d 1211, 1218 (Pa. Super. Ct. 2001) (citing Black's Law Dictionary 1057 (7th ed. 1999)).

3. Improper Purpose

Even if a party lacked probable cause or acted with gross negligence in filing a suit, that party is not liable under the Dragonetti Act unless the suit also was filed for an improper purpose. 42 Pa. Cons. Stat. Ann. § 8351 (West 1998); Broadwater v. Sentner, 725 A.2d 779, 784 (Pa. Super. Ct. 1999). The plaintiff need not present a "confession" that defendant acted with an improper purpose. Gentzler v. Atlee, 660 A.2d 1378, 1385 (Pa. Super. Ct. 1995). Instead, an improper purpose may be inferred where the underlying action was filed without justification. Id.

B. Defendants' Summary Judgment Motion

In their motion, Defendants Phyllis Kushner and the Estate argue that they relied in good faith on the advice of counsel in bringing the legal malpractice suit. Defs.' Summ. J. Mem. at 10-15. If this good faith reliance is established as a matter of law, it follows that these two defendants had probable cause to bring the suit. 42 Pa. Cons. Stat. Ann. § 8352(2) (West 1998). To establish probable cause under the good faith reliance prong, the moving party must show: (1) a reasonable belief in the facts on which the claim was based and (2) reasonable reliance on the advice of counsel which was sought in good faith after full disclosure of all relevant facts. 42 Pa. Cons. Stat. Ann. § 8352 (West 1998).

Defendants argue that they first relied on the advice of the Dash Firm to initiate the suit and then relied on the advice of the Hartman Firm to move forward with it. Defendants point to excerpts from Mrs. Kushner's depositions to demonstrate that she relied on her attorneys' advice at all times. First, Defendants point to Mrs. Kushner's statement that David Dash, now deceased, informed her that the medical malpractice action expired in February 1994. Def.'s Summ. J. Mem. at 11-12. Apparently, this date was based on a February 1992 meeting with Dr. Bruce Freundlich where the Kushner's were informed that Amiodarone was causing the black spots on Mr. Kushner's hands and arms. Id. Second, Defendants point to Mrs. Kushner's statements that she relied on the expertise of Hart

and Dash, respectively, while they represented her. Id. at 12. Finally, Defendants point to American Int'l Airways, Inc. v. American Int'l Group, 816 F. Supp. 1058, 1064 (E.D. Pa. 1993), for the proposition that, under the Dragonetti Act, an attorney's advice need not be sound for a plaintiff to rely on it.

In opposing this motion, Plaintiffs focus on a different portion of the Dragonetti Act. As noted above, in order to have probable cause to bring a suit, a party must "reasonably [believe] in the existence of the facts upon which the claim is based." 42 Pa. Cons. Stat. Ann. § 8352 (West 1998). Plaintiffs argue that Mrs. Kushner cannot demonstrate, as a matter of law, that she reasonably believed in the facts underlying her legal malpractice claim. Pls.' Opp'n Mem. at 11-17.

Specifically, Plaintiffs point to Mrs. Kushner's differing testimony regarding the date she discovered the link between Amiodarone and Mr. Kushner's Parkinson-like symptoms. Id. As noted above, in the narrative Mrs. Kushner prepared for the Beasley Firm, she stated that she was "stunned" when Dr. Stern told her of the connection between Amiodarone and the Parkinson-like symptoms in early 1993. In contrast, during a recent deposition, Mrs. Kushner stated that she made a typing error in the narrative and that Dr. Stern actually conveyed this information to her in 1992. Id. at 14. There is nothing in the record, however, indicating that Mrs. Kushner told anyone of this 1992 discovery date until

faced with the instant suit. Id. Plaintiffs also point to evidence of several other discovery dates put forth by Mrs. Kushner during the course of the litigation, including May and July 1993, respectively. Id.

Plaintiffs argue that these inconsistencies prevent the defendants from proving as a matter of law that Mrs. Kushner reasonably believed in the facts underlying the legal malpractice action. This Court agrees. Where there are material conflicts in the evidence, probable cause is a question of mixed fact and law to be submitted to the factfinder. Bannar, 701 A.2d at 248. Because Plaintiffs raise a genuine issue of fact regarding Mrs. Kushner's reasonable belief in the facts underlying the legal malpractice suit, Defendants' motion is denied.

C. Plaintiffs' Summary Judgment Motion

In their motion, Plaintiffs seek summary judgment on three issues. First, Plaintiffs argue that the Hartman Firm's gross negligence in bringing the legal malpractice action has been established as a matter of law. Alternatively, Plaintiffs argue that they have proven as a matter of law that Defendants brought the legal malpractice action without probable cause. Finally, Plaintiffs argue that an improper purpose can be attributed as a matter of law to the legal malpractice suit.

1. Gross Negligence

In their gross negligence argument, Plaintiffs point to

Hartman's deposition for the proposition that Hartman "failed to make any inquiry whatsoever into what was known to The Beasley Firm, what was told to the Beasley Firm, and what information was . . . available to The Beasley Firm." Pl.'s Summ. J. Mem. at 17. Furthermore, Plaintiffs state that the Cordry memorandum, which Hartman purportedly relied on in advising Mrs. Kushner to sue them, does not address the Beasley Firm's liability. Accordingly, Plaintiffs argue that Hartman was grossly negligent in failing to conduct any investigation of Kushner's claim before filing suit against them. Pl.'s Summ. J. Mem. at 17-18 (comparing Hartman's actions to "any other attorney who would, for example, institute a medical malpractice action against a physician without even reading the medical records.").

In response, Defendants argue that Hartman was not grossly negligent because, despite the fact that he did not undertake his own investigation, he referred the matter to Cordry, an experienced personal injury litigator, for review. Defendants argue that Hartman was entitled to rely on the Cordry memorandum because Cordry reviewed all the relevant materials supplied to him. Finally, Defendants dispute Plaintiffs' statement that the Cordry memorandum does not address the Beasley Firm's liability.

Hartman's gross negligence is not established as a matter of law. Under the Dragonetti Act, gross negligence is defined as "a lack of slight diligence or care, or a conscious, voluntary act or

omission in reckless disregard of a legal duty and of the consequences to another party. . . .” Hart v. O’Malley, 781 A.2d 1211, 1218 (Pa. Super. Ct. 2001) (citing Black’s Law Dictionary 1057 (7th ed. 1999)). Defendants raise a genuine issues of fact regarding the content of the Cordry memorandum and the propriety of Harman’s reliance on it. This Court may not weight the evidence in deciding a summary judgment motion. As such, Plaintiffs’ motion on this issue is denied.

2. Probable Cause

Plaintiffs make several arguments to support their claim that the Defendants lack probable cause to bring the legal malpractice action. First, Plaintiffs argue that they were entitled to rely on Mrs. Kushner’s narrative, which stated that she first learned of the Amiodarone toxicity in 1993, in advising the Kushners that the medical malpractice action expired in early 1995. Pls.’ Summ. J. Mem. at 19-20. Second, Plaintiffs aver that the Defendants “contrived” their current statements that the statute of limitations actually expired in 1994 based on the early 1992 appointments with Drs. Freundlich and Stern. Id. at 21-26. Plaintiffs state that the 1992 discovery date is contradicted by Mrs. Kushner’s statements to them and to her other lawyers, and that the date was invented to provide a defense to the instant suit. Finally, Plaintiffs argue that even if the 1992 discovery date is correct, any negligence by Plaintiffs could not be the

proximate cause of the Kushner's damages. Id. at 25-26. Plaintiffs point out that the medical malpractice action was dismissed even though a 1992 discovery date was not alleged by the medical malpractice defendants. Under Plaintiffs' view, it follows that the medical malpractice action would have failed regardless of Plaintiff's conduct.

Regarding the Plaintiffs' first argument, Defendants respond that they had probable cause to bring the action because they believed that the Beasley Firm was negligent in relying solely on Mrs. Kushner's narrative. Defs.' Opp'n Mem. at 14. Defendants state that the Beasley Firm possessed medical records that show other potential "discovery" dates that would have started the limitations period. Similarly, Defendants respond to Plaintiff's second argument by pointing out that the 1992 appointments with Drs. Freundlich and Stern were in Mr. Kushner's medical records and have not been created solely as a defense to this litigations. Id. at 15. Finally, regarding Plaintiff's proximate cause argument, Defendants respond that, had the Plaintiffs discovered the dates and filed a timely action, no dismissal would have been granted. Id. at 16.

Plaintiffs have not established Defendants' lack of probable cause as a matter of law. When there are material conflicts in the evidence, the existence of probable cause is an issue for the factfinder. Bannar, 701 A.2d at 248-49. In this case, Defendants

raise genuine issues of fact regarding their basis for bringing the legal malpractice action. On a motion for summary judgment, this court is not permitted to weigh the evidence presented. As such, Plaintiffs motion on this issue is denied.

3. Improper Purpose

Plaintiffs argue that Defendants brought the legal malpractice action against them only because they are a "deep pockets" firm capable of paying out a large settlement. Pls.' Summ. J. Mem. at 32-34. Plaintiffs also point to a letter that Hartman wrote to Mrs. Kushner saying that the dismissal of the legal malpractice action was "not unexpected." Id. at 33. It follows, Plaintiffs argue, that the Hartman firm brought a meritless suit solely in the hope that the Beasley Firm would settle rather than deal with a potentially damaging lawsuit.

Defendants respond that, as their clients' representatives, they were entitled to choose from among several potential defendants the one that they felt would most likely be able to satisfy any potential judgments. Defs.' Opp'n Mem. at 25-27. Additionally, Defendants state that the Hartman letter really referred to Hartman's belief that Mr. Beasley would win because of his esteemed reputation in the Philadelphia legal community.

As noted above, improper purpose may be inferred when a suit is filed without justification. Broadwater, 725 A.2d at 784-85. In Broadwater, the plaintiff's attorney, Sentner, filed a petition

for letters of administration and motion to compel discovery in a purported attempt merely to reap financial gain from the proceedings. Id. at 780-81. The defendants in that action then brought an action under the Dragonetti Act against Sentner. Id. The court held that, while improper purpose may be inferred from a baseless suit, where there are genuine issues regarding the attorney's motives, improper purpose is a question for the factfinder. Id. Similarly, in this case Defendants raise genuine issues of fact regarding their motives for bringing the underlying legal malpractice action. As such, Plaintiffs' motion on this issue is denied.

IV. CONCLUSION

Once the movant adequately supports its summary judgment motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. In this case, both sides have demonstrated that there are genuine issues of fact regarding probable cause, gross negligence and improper purpose. Accordingly, both motions are denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES E. BEASLEY, ESQ., et al.	:	CIVIL ACTION
v.	:	
HARTMAN, NUGENT, & ZAMOST, et al.	:	NO. 01-0973

O R D E R

AND NOW, this 4th day of November, 2002, upon consideration of Defendants' Motion for Summary Judgment (Docket No. 30) and Plaintiffs' Partial Motion for Summary Judgment (Docket No. 31), IT IS HEREBY ORDERED that both motions are **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.